Supreme Court, U.S.
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No. 99-341

In The

Supreme Court of the United States

SIGNET BANK/VIRGINIA, a Virginia corporation, CAPITAL ONE BANK, a Virginia corporation, and DOES 2-100,

Petitioners,

vs.

WILLIAM YU and DARLENE YU, individually and on behalf of others similarly situated,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal For The State Of California First Appellate District

REPLY TO BRIEF IN OPPOSITION

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Robert L. Stern, Eugene Gressman, Stephen M. Shapiro and Kenneth S. Geller, *Supreme Court Practice* (7th ed. 1993) 1

INTRODUCTION

Respondents' opposing brief is primarily an attack on this Court's jurisdiction.[1] Respondents argue that the court of appeal's judgment cannot be "final" within the meaning of 28 U.S.C. § 1257 because the case was remanded for further proceedings after the constitutional questions were decided. In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479-486 (1975), however, this Court described four non-exclusive categories of cases which are deemed final for the purpose of section 1257, even though further proceedings in lower state courts remained when *certiorari* was sought.[2] The Court explained:

> In most, if not all, of the cases in these categories, these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date, and immediate rather than delayed review would be the best way to avoid "the mischief of economic waste and of delayed justice," *Radio Station WOW, Inc. v. Johnson*, [326

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[1] Petitioners did not receive Respondents' Brief in Opposition until October 1, 1999.

[2] Although Respondents repeatedly refer to the four categories of cases described in *Cox Broadcasting* as "exceptions" to the requirement of finality, *see* Opposition at 8, those classes are properly described "as situations in which [this Court] finds there to be sufficient finality even though there are further proceedings on the merits of the case in state court." Erwin Chemerinsky, *Federal Jurisdiction*, § 10.4, at 598 (2d ed. 1994). *See also* Robert L. Stern, Eugene Gressman, Stephen M. Shapiro and Kenneth S. Geller, *Supreme Court Practice*, at 94-96 (7th ed. 1993) (discussing "literal and pragmatic concepts of finality").

> U.S. 120, 124 (1945)], as well as precipitate interference with state litigation.

Id. at 477-78.

In the third and fourth *Cox Broadcasting* categories, "the federal issue would be mooted if the petitioner or appellant seeking to bring the action here prevailed on the merits in the later state-court proceedings, but there is nevertheless sufficient justification for immediate review of the federal question finally determined in the state courts." *Id.* at 478-79.

This case falls neatly within the fourth category of *Cox Broadcasting*. Petitioners here might prevail on the merits on nonfederal grounds, thus obviating the need for this Court to review the federal issues presented. Reversal of the court of appeal would preclude further litigation, whereas a refusal to review the matter immediately could lead to the serious erosion of federal policy. *See id.* at 482-83.

I. THIS CASE MEETS THE FINALITY CRITERIA IN THE FOURTH *COX BROADCASTING* CATEGORY.

A. Decisions on the Constitutional Questions Here Have Been Finally Rendered by the Highest Court of a State in which a Decision Could Be Had.

Because Petitioners sought and were denied review by the California Supreme Court (App. at 32), they have met the first prong of the 28 U.S.C. § 1257(a) finality test. *Perry v. Thomas*, 482 U.S. 483, 489 & n7 (1987); *Abood v.*

Detroit Bd. of Educ., 431 U.S. 209, 216 (1977); *cf. California v. Trombetta*, 467 U.S. 479, 484 (1984).

B. Further Proceedings Following the Court of Appeal's Remand Will Not Require the Decision of Additional Federal Questions That Might Later Require Review By This Court.

As Respondents correctly concede, to prevail on their state law claims, Respondents must still carry their burden of convincing the trier of fact that they are entitled to judgment on either of their remaining novel state law claims. Apart from the constitutional questions presented to this Court, Petitioners have asserted only state law defenses to those claims. Immediate review is the best way to avoid " 'the mischief of economic waste and of delayed justice.' " *Cox Broadcasting*, 420 U.S. at 478.

If Petitioners prevail either because Respondents fail to carry their burden of proof or because Petitioners' own state affirmative defenses prevail, this Court's ability to review the constitutional questions presented today will vanish. Petitioners are thus situated similarly to those in *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 55-56 (1989), in which the Court granted review when defendants could have prevailed on non-federal grounds at their trial, thereby preventing appeal of the constitutionality of the application of state RICO law to obscenity.

If this Court grants *certiorari* and reverses because proper application of the Full Faith and Credit Clause prohibits California from entertaining actions for damages predicated on a collateral attack upon the final and fully executed judgment of Virginia, or if the Court

decides that California consumers are not a protected class entitled to elevated due process protections, this litigation would end because this Court's judgment "would be preclusive of any further litigation on the relevant cause of action." *Cox Broadcasting*, 420 U.S. at 482-83. *See also Southland Corp. v. Keating*, 465 U.S. 1, 6-8 (1984) (the California Supreme Court decision was reviewable under the *Cox Broadcasting* fourth category for "reversal of a state-court judgment in this setting will terminate litigation of the merits of this dispute").

C. The Court of Appeal's Decision Erodes Important Federal Policies and Therefore Requires This Court's Review.

For the reasons explicitly stated in the Petition, the decision below significantly erodes full faith and due process principles established by this Court over a period of many decades. *See Cox Broadcasting*, 420 U.S. at 485-86; *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178-80 (1988) (the lower court's "decision [had] important implications for the regulation of federally owned nuclear production facilities" and review of Ohio Supreme Court's decision was thereby final enough although further proceedings were pending in Ohio courts).

This case is procedurally indistinguishable from *Cox Broadcasting* itself in which the Court granted review to decide "whether, consistently with the First and Fourteenth Amendments, a State may extend a cause of action for damages for invasion of privacy." 420 U.S. at 471. Petitioners seek review to determine whether, consistently with the Full Faith and Credit Clause and the

Fourteenth Amendment, California may "extend a cause of action" for abuse of process which requires California courts to collaterally attack a final and fully executed judgment of a Virginia court. In *Cox Broadcasting Corp. v. Cohn*, like the court below, the Georgia court had rejected petitioner's constitutional challenges to state law and remanded the case for trial. 200 S.E. 2d 127, 131, 133 (Ga. 1973). The Court held that the Georgia Supreme Court's judgment was final on the federal issues and subject to review:

> Appellants . . . may prevail at trial on nonfederal grounds, it is true, but if the Georgia court erroneously upheld the statute, there should be no trial at all. Moreover, even if appellants prevailed at trial and made unnecessary further consideration of the constitutional question, there would remain in effect the unreviewed decision of the State Supreme Court that [the First and Fourteenth Amendments did not prohibit the action]. . . . On the other hand, if we now hold that the First and Fourteenth Amendments bar civil liability . . . , this litigation ends. Given these factors . . . we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality.

420 U.S. at 485-86.

Here, as in *Cox Broadcasting*, even if Petitioners should prevail at trial on state law grounds, the court of appeal's decision on federal constitutional grounds will remain effectively unreviewed and unreviewable. *See also, Goodyear Atomic Corp.*, 486 U.S. at 179 ("even if appellant prevails . . . on nonfederal grounds . . . the unreviewed

decision of the Ohio Supreme Court might seriously erode federal policy"). In *Local No. 438 Construction & Laborers' Union v. Curry*, 371 U.S. 542 (1963), this Court heard petitioner's claim that the NLRB had exclusive jurisdiction over the controversy after the Georgia Supreme Court had reversed a trial court's refusal to enter a temporary injunction against picketing. Although further proceedings were pending following the Georgia Supreme Court's remand, this Court asserted its power with respect to "a judgment of the [state] court finally and erroneously asserting its jurisdiction to deal with a controversy which is beyond its power," holding that the judgment satisfied the requisites of section 1257. *Id.* at 548.

The judgment below has the practical finality required to invoke the jurisdiction of this Court pursuant to section 1257. The questions raised are vital to the constitutional strength of the Full Faith and Credit and Due Process Clauses of the Constitution. The issues are ripe, and they merit review now to foster judicial economy and to prevent the loss of review if the case following remand were decided on state grounds only.

WHEREFORE, Petitioners Signet Bank/Virginia and Capital One Bank respectfully pray that this Petition be granted.

Dated: October 8, 1999

Respectfully submitted,

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